IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

WP(C).No. 33964 of 2006(R)

PETITIONER:

ENDEENKUTTY HAJI,
MANAGER, A.L.P.SCHOOL, THALASSERY.

BY ADV. SRI.ELVIN PETER P.J.
SRI.C.X.ANTONY BENEDICT

RESPONDENTS:

THE ASSISTANT EDUCATIONAL OFFICER,
VADAKKANCHERRY.

BY GOVERNMENT PLEADER SHRI.BENCHAMIL PAUL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No.33964/06.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE STAFF FIXATION ORDER DTD.29.7.06.

P2. COPY OF THE JUDGMENT IN W.P.C.NO.16197/05.

P3. COPY OF THE ORDER DTD.2.11.96.

P4. COPY OF THE ORDER DTD.25.11.06.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.33964 of 2006

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Dated this the 14th day of September, 2007

J U D G M E N T

The petitioner is the manager of an aided school. He is challenging Ext.P4 order of the A.E.O., Vadakkancherry, refusing to take into account ten students, who were admitted on the basis of the declaration of the parents regarding the date of birth, for the purpose of staff fixation. The contention of the petitioner is that in so far as the Kerala Education Rules provide for admission of students after obtaining a declaration from the parents regarding the date of birth of the pupil admitted, the AEO cannot insist upon production of birth certificates in order to take into account the number of those pupils also for the purpose of staff fixation. The petitioner therefore seeks a further direction to declare that the admission given to the 10 students accepting the declaration given by their parents regarding the date of birth is legal and valid.

2. The learned Government Pleader on the strength the counter affidavit filed on behalf of the respondent submits that by Ext.R1(a) production of birth certificate has been made compulsory for admission to schools in Kerala and therefore, the petitioner cannot now contend that the declaration submitted by the parents in that regard is sufficient.

3. In answer to the said contention, the petitioner would contend that this question was considered by this court in Ext.P2 judgment holding that as long as Rule 1 of Chapter VI of KER is not amended appropriately, schools are entitled to admit students in the light of the provisions of the said rule. The said rule permits admission of students on the basis of the declaration of the parent regarding the date of birth of the ward.

4. I have considered the rival contentions.

5. Ext.R1(a) is only an executive order. An executive order cannot amend the provisions of a statute, which is the settled law on the subject. That being so, the respondent cannot now contend that notwithstanding Rule 1 of Chapter VI of KER,

birth certificate should be made compulsory for admission to aided schools also. This view is fortified by Ext.P2 judgment with which I respectfully agree. In the above circumstances, the petitioner is entitled to the relief prayed for in this writ petition. Accordingly, Ext.P4 is quashed and it is declared that the admissions given to the ten students in the petitioner's school, which is the subject matter of Ext.P4, is legal and valid. Consequently, the petitioner is entitled to have the student strength and staff strength fixed taking into account those ten students also. Orders in this regard shall be issued within one month from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.